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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,179	07/18/2003	Christopher Lee Berg	M81.12-0060	2674
7590	12/02/2004		EXAMINER	
Z. Peter Sawicki Westman, Champlin & Kelly Suite 1600 900 Second Avenue South Minneapolis, MN 55402-3319			RAMANA, ANURADHA	
			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 12/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

03

Office Action Summary	Application No.	Applicant(s)	
	10/623,179	BERG ET AL.	
	Examiner	Art Unit	
	Anu Ramana	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 July 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-6, 8, 17 and 18 is/are allowed.
- 6) Claim(s) 9-16 and 19 is/are rejected.
- 7) Claim(s) 7, 20 and 21 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 July 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/17/2003.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed on November 17, 2003, fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to under "Other Art" therein has not been considered.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference element mentioned in the description: "73." Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The title of the invention is objected to due to a minor typographical error. To correct the minor error, "a" should be inserted after "replacing" and before "knee-joint."

Claim Objections

Claims 7, 12, 19 and 20 are objected to because of the following informalities.

In line 1 of claims 7, 12 and 20, "and (first occurrence)" should be deleted to correct a minor typographical error.

In claim 19, line 9, it appears that "the" should be replaced with "each" for clarity.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Moore et al. (US 4,526,355).

Moore et al. disclose an apparatus 10 for knee arthroscopy including a support 26 mounted to a surgical table 16 with first and second arms (36, 40) wherein a first arm has a flexible strap 76 extending between the distal end portions of the support arm (Figs. 1 and 4, col. 1, lines 6-11, col. 2, lines 46-68, col. 3, lines 1-25 and lines 66-68 and col. 4, lines 1-13).

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Zahiri et al. (US 5,645,079).

Zahiri et al. disclose an apparatus 10 including a support 30 mounted to a surgical table 12 having first and second arms (66, 82) wherein each arm is provided with flexible straps (67, 83) extending between the distal end portions of each support arm (Figs. 1 and 2, col. 6, lines 31-40, col. 7, lines 45-65 and col. 8, lines 41-52).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grieshaber (US 4,813,401) in view of Michelson (US 5,662,300).

Grieshaber discloses the use of a plurality of retractor blades 26 rigidly mounted to a rail B of a surgical table A depending upon the size and location of the incision and the physical dimensions of the patient (Fig. 1, col. 1, lines 9-44, col. 5, lines 16-68 and col. 6, lines 1-14).

Grieshaber discloses all elements of the claimed invention except for at least one of the retractors having a flexible portion.

Michelson discloses a retractor having a blade and a gooseneck or "flexible" portion 260 for ease of adjustment, the flexible portion having a flexible cord 262 (col. 1, lines 11-14 and 30-40, col. 2, lines 25-49 and col. 9, lines 42-46).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided one or more retractors having a flexible portion, as taught by Michelson, in the Grieshaber apparatus for ease of adjustment of a blade 26.

Regarding claims 13 and 14, although Grieshaber does not disclose placement of the arms of the retractor support (10b, 27) along opposite sides of the knee joint or below the knee joint, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have located the arms at these locations, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 7.

Allowable Subject Matter

Claims 1-6, 8 and 17-18 are allowed.

Claim 7 would be allowable if the minor objection made in this office action is overcome.

Claims 20 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anuadha Ramana*
November 28, 2004

E.C.R.
EDUARDO C. ROBERT
PRIMARY EXAMINER